

STATE OF MICHIGAN
COURT OF APPEALS

ALFRED TEZAK and MARILYN TEZAK,

Plaintiffs-Appellees,

v

HUNTINGTON RESEARCH ASSOCIATES,
LTD.,

Defendant-Appellant.

UNPUBLISHED

May 15, 2001

No. 215490

Oakland Circuit Court

LC No. 97-002074-NZ

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals as on leave granted from an order granting plaintiffs' motion to compel discovery and denying defendant's motion for a protective order in this trespass and invasion of privacy case. We reverse and remand for further proceedings consistent with this opinion.

In their complaint, plaintiffs alleged that because of a personal injury lawsuit they filed against a nonparty in federal court, defendant was hired to gather impeachment evidence regarding the extent of plaintiff Alfred Tezak's injuries. Plaintiffs contended that when defendant failed to gather any impeachment evidence, defendant attempted to "make it up" to its client by using recording and/or tracking devices on plaintiffs' vehicles without the consent of its client. Plaintiffs contended that in doing this, defendant committed trespass and invasion of privacy.

On March 3, 1998, plaintiffs served upon defendant interrogatories, requests for production of documents, and requests to admit. In May 1998, defendant filed a motion for a protective order. Defendant argued that MCL 338.840; MSA 18.184(20), the Private Detective License Act, made any communications between a client and a private investigator privileged and that a protective order should therefore be granted to prevent plaintiffs from obtaining the discovery they requested. The trial court denied defendant's motion for a protective order and granted plaintiff's subsequent motion to compel. Defendant argues that this order must be reversed.

This Court reviews a trial court's order to grant or deny discovery for an abuse of discretion. *Reed Dairy Farm v Consumers Power Company*, 227 Mich App 614, 616; 576

NW2d 709 (1998). This Court also reviews a trial court's determination regarding privilege for an abuse of discretion. *Franzel v Kerr Mfg Co*, 234 Mich App 600, 614, 617; 600 NW2d 66 (1999).

We hold that the trial court abused its discretion by denying defendant's motion for a protective order in total and by ordering compliance with *all* of plaintiff's discovery requests.

A private investigator-client privilege exists in this state by virtue of MCL 338.840; MSA 18.184(20):

(1) Any person who is or has been an employee of a licensee [a private detective under the act] shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who wilfully makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager or employee of a licensee who wilfully furnishes false information to clients, or who wilfully sells, divulges or otherwise discloses to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to immediate suspension of license by the secretary of state and revocation of license upon satisfactory proof of the offense to the secretary of state. *Any communications, oral or written, furnished by a professional man or client to a licensee, or any information secured in connection with an assignment for a client, shall be deemed privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.* [Emphasis added.]

In *Ravary v Reed*, 163 Mich App 447, 451-452; 415 NW2d 240 (1987), this Court examined this statute and noted the Legislature's "determination that broad protection is to be accorded the private detective-client relationship. Any communication by a client to a licensee and any information secured in connection with an assignment for a client is privileged." The Court analogized the private investigator-client privilege to the attorney-client privilege. *Id.* at 452.

The trial court was bound to follow MCL 338.840; MSA 18.184(20) and was also bound to follow *Ravary* because it is a published case of this Court that has not been contradicted by any other panel of this Court or by the Supreme Court.¹ See *Tebo v Havlik*, 418 Mich 350, 362;

¹ Plaintiff contends that *Ravary* does not apply to the instant case because the *Ravary* Court stated, "[w]e emphasize that our holding is limited to the facts presented." See *Ravary*, *supra* at 455 n 6. However, in saying this, the Court was clearly referring to its statement that "disclosure of the client's name *under the facts of this case* would be tantamount to disclosure of the substance of that confidential communication" (emphasis added). In other words, the *Ravary*

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343 NW2d 181 (1984). MCR 2.302(B)(1) states that “[p]arties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action” (emphasis added). See also *Ravary*, *supra* at 455-456. Accordingly, the trial court should have determined which discovery requests were covered by the private detective-client privilege and exempted these from discovery.

We note that *Ravary* does not necessarily prevent a suit such as the present one, which contains claims of trespass and invasion of privacy. A detective may reveal information about his investigation that would not reveal the contents of his communication to his client or employer. For example, if an employee of defendant revealed that he placed a tracking device on plaintiffs’ car, it does not appear that the contents of his communications with the client would be revealed. Therefore, on remand, the trial court must determine which discovery requests, if any, can be answered without revealing privileged communications under MCL 338.840; MSA 18.184(20). The court may find an in camera review necessary to determine if compliance with certain discovery requests would result in the disclosure of privileged information. The court may also find reference to the law of the attorney-client privilege to be helpful.

Plaintiffs contend that the applicable privilege was waived in this case by defendant’s failure to answer requests to admit within twenty-eight days of service. Under MCR 2.312(B)(2), a matter regarding which a request to admit is made is deemed admitted if the request to admit is not addressed within twenty-eight days. The requests to admit at issue here sought to reveal that defendant was not acting under the direction of any client at the time it injured plaintiffs, such that the private detective-client privilege did not apply in this case. The trial court did not reach this issue, since it denied defendant’s motion for a protective order on other grounds. On remand, the court shall address this issue.

Finally, defendant contends that the information plaintiff requested was exempted from disclosure by the attorney-client privilege because it was acting as the agent of an attorney. We decline to address this issue, since defendant did not properly raise it in the trial court such that it is preserved for appeal. See *Fast Air, Inc, v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

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Court unambiguously held that confidential communication was privileged but made clear that revealing the name of the client would not in all cases be tantamount to revealing confidential communication. Whether revealing the name of the client would be tantamount to revealing confidential communication is not at issue in this case. The underlying holding of *Ravary* – that confidential communication is privileged under MCL 338.840; MSA 18.184(20) – applies to the instant case.